

GAHC010158252023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4119/2023

ABDUL BAKI SHEIKH
SON OF LATE ABUL KASHEM SK.,
RESIDENT OF VILLAGE- ASHARIKANDI,
P.S.- GAURIPUR, DIST.- DHUBRI,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
LAND REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI- 06.

2:THE DISTRICT COMMISSIONER
JORHAT, P.O. AND DIST.- JORHAT
ASSAM, PIN- 785001.

3:THE CIRCLE OFFICER
JORHAT WEST REVENUE CIRCLE
DISTRICT- JORHAT, ASSAM, PIN- 785013

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

01.09.2023

Heard Shri M. Khan, learned counsel for the petitioner. Also heard Shri C.S.

Hazarika, learned State Counsel and Shri S. Dutta, learned Standing Counsel, Revenue Department.

Considering the issue involved and the fact that the State respondents have filed the affidavit-in-opposition by serving a copy to the learned counsel for the petitioner, this matter is taken up for final disposal at the motion stage itself.

Since the affidavit is not tagged with the records, Shri Hazarika, the learned State Counsel has handed over a copy of the same to the Court which is made part of the records.

A short issue is involved in this present writ petition. The petitioner was serving as a Lot Mandal in the Office of the Circle Officer, Jorhat West Revenue Circle and was placed under suspension vide an order dated 17.10.2022. The said suspension was made under Rule 6 (2) of the **Assam (Discipline & Appeal) Rules, 1964** (hereinafter the Rules) inasmuch as the petitioner was arrested on 15.10.2022 in connection with ACB P.S. Case No. 49/2022 under Section 7 (a) of the Prevention of Corruption Act, 1988. It is the case of the petitioner that though he was released on bail on 17.11.2022, till the time of filing of the writ petition, neither any disciplinary proceeding nor any order for reviewing the suspension was passed.

Shri Khan, the learned counsel for the petitioner has however submitted that after filing of this writ petition, he has come to learn that a disciplinary proceeding has been initiated vide issuance of a Show Cause Notice on 25.07.2023. It is submitted that by such initiation, the requirement of the mandatory review cannot be obliterated. The learned counsel has also referred to the decision of a Division Bench of this Court in the case of **Rakibuddin Ahmed vs. State of Assam** reported in **2020 (2) GLR 621**. The Hon'ble Division Bench in the said judgment which was by means of a reference by the learned Single Judge has held that the principles laid down by the Hon'ble Supreme Court in the case of **Ajay Kr. Choudhary vs. Union of India and Anr.** reported in **(2015) 7 SCC 291** would also be applicable in a case

of deemed suspension wherein a Government Servant is put under suspension because of the fact that he was arrested and was in custody for a period exceeding 48 hours in accordance with Rules 6 (2) of the said Rules.

The learned counsel for the petitioner has also placed before this Court a decision dated 19.06.2023 of this Court passed in WP(C)/3124/2023 (***Haridas Singha vs. The State of Assam & Ors.***) whereby, following the ratio laid down in the case of ***Rakibuddin Ahmed*** (supra) the interference was made.

Shri Hazarika, the learned State Counsel as well as Shri Dutta, the learned Standing Counsel, Revenue have however submitted that the charges against the petitioner are grave for which he was also arrested in the connected police case and therefore reinstatement may not be directed in the interest of justice.

After consideration of the rival submissions, this Court is of the view that the point involved is no longer *res-integra* in view of the ratio laid down by the Hon'ble Division Bench in the case of ***Rakibuddin Ahmed*** (supra) whereby it has been held that the requirement of a review of a suspension order has to be followed even in case of a deemed suspension.

In that view of the matter, this Court is of the unhesitant opinion that the present order of suspension is unsustainable in law and accordingly, the same is set aside. However, considering the gravity of the allegations which has been emphasized by the learned State Counsel, it is directed that while the suspension has been interfered with requiring consequential reinstatement of the petitioner, the authorities would be at liberty to post the petitioner in any non-sensitive post.

JUDGE

Comparing Assistant